

FILED
GREAT FALLS, MONT.

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IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF MONTANA

GREAT FALLS DIVISION

UNITED STATES OF AMERICA,

Plaintiff,

vs.

JOE ROBERTSON,

Defendant.

No. CR-07-121-GF-SEH

CVB No.: MCR-07-5011-GF-RKS

MEMORANDUM AND ORDER

This matter is before the Court on appeal from a Judgment and Sentence issued by the Honorable Magistrate Judge Keith Strong on August 14, 2007. The United States has moved to dismiss the appeal for lack of jurisdiction.

BACKGROUND

On April 23, 2007, Defendant was issued several citations for blocking and damaging a Forest Service road, constructing a horse pasture on National Forest Lands and allowing livestock to free range on National Forest Lands. On June 28, 2007, Defendant was arraigned and provided notice of the August 9, 2007, trial date. Defendant was represented by retained counsel during the arraignment.

A bench trial was held on August 9, 2007. Defendant did not appear and was, therefore, tried in absentia. Defendant was found guilty of violations F4019855, F4019856, F401957, and F4019859. Violation F4019860 was dismissed on motion of the United States. Defendant was

F4019859. Violation F4019860 was dismissed on motion of the United States. Defendant was fined \$500 for each violation, and imposed the mandatory assessment fee of \$25 for each violation, for a total of \$2,625.00. Judgment and Sentence were entered on August 14, 2007. Defendant filed a Notice of Appeal in this Court on September 6, 2007. The envelope in which the Notice of Appeal was mailed to the Court contains post-marks indicating it was sent to the Court from Basin, Montana, via certified mail, on September 5, 2007.

DISCUSSION

A Notice of Appeal must be filed with the Court within 10 days of the entry of judgment.

Fed. R. Crim. P. 58(g)(2)(B) provides, in pertinent part:

“A defendant may appeal a magistrate judge’s judgment of conviction or sentence to a district judge within 10 days of its entry. To appeal, the defendant must file a notice with the clerk specifying the judgment being appealed and must serve a copy on an attorney for the government.”

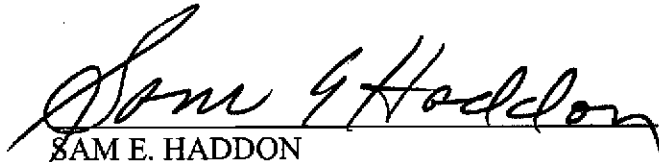
The appeal is not timely. This Court is without jurisdiction to proceed. 28 MOORE’S

FEDERAL PRACTICE § 658.26[3] (Matthew Bender 3d ed.).

ORDER

The United States’ Motion to Dismiss Appeal for Lack of Jurisdiction is GRANTED.

DATED this 5th day of November, 2007.


SAM E. HADDON
United States District Judge

CERTIFICATE OF MAILING

DATE 11-5-07 BY MS

I hereby certify that a copy of this order was mailed to

Robertson

USA

CVB